

**UNITED STATES DISTRICT COURT**

**DISTRICT OF CONNECTICUT**

JESSICA FOSTER,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:02cv1433 (PCD)
	:
MASSACHUSETTS MUTUAL LIFE	:
INSURANCE COMPANY,	:
Defendant.	:

**RULING ON MOTION TO REMAND**

Plaintiff moves to remand the present action to state court. For the reasons set forth herein, the motion is denied.

**I. BACKGROUND**

Plaintiff was employed by defendant. After her termination, plaintiff filed a two-count complaint in the Superior Court for the Judicial District of Hartford alleging breach of an express contract and of an implied contract. Plaintiff alleges that she was not offered a \$45,000 separation package in conjunction with the layoff of over one hundred employees but was instead improperly terminated for misconduct on December 10, 2001, less than two weeks after the layoff. Plaintiff's seeks compensatory damages for lost wages and employment benefits, punitive damages for breach of contract and attorney's fees. Plaintiff certified in her complaint that the amount in controversy exceeded \$15,000 as required by CONN. GEN. STAT. § 52-91. Defendant removed the action to this Court alleging that the parties are of diverse citizenship and that "the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs."

## II. DISCUSSION

Plaintiff concedes the issue of diversity of citizenship, arguing only that defendant cannot establish the amount in controversy as required by 28 U.S.C. § 1332. Defendant responds that there is sufficient evidence to establish that the amount in controversy exceeds the jurisdictional amount.

### A. Standard

Defendant bears the burden of showing that removal was proper. *United Food & Commercial Workers Union v. CenterMark Props. Meriden Square, Inc.*, 30 F.3d 298, 300 (2d Cir. 1994). “A party invoking the jurisdiction of the federal court has the burden of proving that it appears to a ‘reasonable probability’ that the claim is in excess of the statutory jurisdictional amount.” *Tongkook Am., Inc. v. Shipton Sportswear Co.*, 14 F.3d 781, 784 (2d Cir.1994) . Doubts as to the existence of federal jurisdiction are to be resolved in favor of state court jurisdiction. *Lupo v. Human Affairs Int’l, Inc.*, 28 F.3d 269, 273 (2d Cir. 1994).

### B. Amount in Controversy

In support of its argument that there is a reasonable probability that the amount in controversy will exceed \$75,000, see 28 U.S.C. § 1332(a), defendant provides evidence that plaintiff’s annual salary at the time of her discharge on December 10, 2001 was \$63,921.78 and that her annual employee benefits are valued at \$2,244.24. Although plaintiff argues that she has never alleged an amount in controversy greater than the \$15,000 allegation in her complaint filed in state court, she leaves defendant to its evidence, providing no evidence that would somehow mitigate damages to an amount below \$75,000. *See, e.g., Bush v. Roadway Express, Inc.*, 152 F. Supp. 2d 1123, 1126-27 (S.D. Ind. 2001) (holding amount in controversy not met by lost wages claim based on evidence of

subsequent employment that mitigated potential damages award to less than \$75,000). As the value of lost wages and benefits according to defendant's figures presently stands at approximately \$71,500, defendant has established to a reasonable probability that the amount in controversy will exceed \$75,000 at the time of judgment.<sup>1</sup>

### III. CONCLUSION

Plaintiff's motion to remand (Doc. No. 12) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, December \_\_\_, 2002.

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Peter C. Dorsey  
United States District Judge

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<sup>1</sup> As defendant has established the jurisdictional amount with evidence as to lost wages and benefits, the question of whether the amount would be satisfied by plaintiff's claims for punitive damages for breach of contract and for attorney's fees need not be addressed.